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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

EINSMANN, MARGARET V

ART UNIT

PAPER NUMBER

1751

DATE MAILED: 09/21/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/042,861	Applicant(s) PETERS ET AL.	
	Examiner Margaret Einsmann	Art Unit 1751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 29 July 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) 26-37 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) 26-37 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>8/19/2002</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 7/29/04 has been entered.

All of the rejections of the previous action have been mooted by the cancellation of the pending claims, claims 1-25. Newly presented claims 26-37 are being examined in this action.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 26-37 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 26 recites the limitation "in a product" in line six. There is insufficient antecedent basis for this limitation in the claim.

Claim 23 recites "in a product" in line five. There is insufficient antecedent basis for this limitation in the claim.

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It appears that in both claims the antecedent basis for the term product is "odor control solution" or else the basis is "a bacteria spore blend." Please clarify.

Claims 26-31 require the presence of a hydrocarbon as the bacteria spore blend binder. The only example of a hydrocarbon illustrated in the specification is PM3180 provided by 3M corporation. The web page www.3M.com describes the products produced by 3M. It describes PM-3180 as a protective chemical which is an anionic emulsion. A hydrocarbon is not an anionic emulsion. Even if there were a hydrocarbon incorporated into said anionic emulsion, the percentages of hydrocarbon binder stated in the specification would be equivalent to the percentage of anionic emulsion, not the percentage of hydrocarbon. Additionally, it is incorrect to describe an anionic emulsion as a hydrocarbon in the specification or claims

Regarding claim 32, the amount of fluorochemical claimed in the odor control solution is 1.25% to 4% while the basis in the specification states that the fluorochemical component is 1.25% to 4.0% fluorine. See the first full paragraph of page 13.

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 26-31 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the

invention. If applicant is indeed using a hydrocarbon binder one skilled in the art cannot duplicate the invention as no hydrocarbon is described in the specification.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 26-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cordick et al. Cordick et al. teach a process of treating carpet fibers with a bacteria spore blend to prevent odor. See figure (1B) and page 5 lines 31-35. Noting example 1 on pages 14 and 15, patentee is treating carpet fibers with the same spore blend as applicant discloses on page 8, in an aqueous solution of a fluorochemical, which is applied from an aerosol container and then dried in a humidity control zone. The examiner takes official notice that lower hydrocarbons are conventionally used as propellants for aerosol containers. Accordingly the composition contains hydrocarbons and fluorochemicals. Regarding the limitation of the amount of fluorochemical in the solution of claim 32, Cordick teaches the amount of applied fluorochemical component is 0.1 to 20 wt% based on the weight of the fiber being treated, as is conventionally described in fiber treating processes. See page 10 lines 23-38. This appears to be equivalent to the term "5 to 25% wet add on amount" as claimed. In claims 29 and 35.

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Regarding claims 28 and 34, patentee states at page 13 line 19 et seq. that the agent may be applied to installed carpet, which, of course, has already been dyed. Regarding the limitation of pH as claimed, that is inherent since patentee is using the exact same composition as applicant, and has not added any acid or base, making the composition essentially neutral.

Cordick does not state the quantity of spore blend on the carpet. Applicant does not claim the amount of spore blend on the carpet except to state that there is an effective amount of a bacteria spore blend. Cordick teaches the use of an effective amount of spore blend; in fact he teaches that the exact same spore blend described in this application is used for the exact same purpose as claimed herein. Patentee describes the treatment amount as spores per gram of carpet. It would have been obvious to the person having skill in the art that the amount of composition patentee applies is equivalent for its intended purpose, which is the same as applicant's purpose, since his results indicate that the application of the spore blend in the amounts patentee uses are sufficient to provide removal of potentially odor causing organic material, which is equivalent to the process applicant claims, absent evidence to the contrary.

Additionally applicant states at page 9 lines 17-21 that the most effective amount is 10^7 cells per gram of fiber weight, which is the same amount as claimed by patentee in claim 16, giving more evidence that the processes are equivalent.

Response to Arguments

Applicant's arguments filed 7/29/04 have been fully considered but they are not persuasive. Applicant states that Cordick does not teach the bacteria in solution of

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binder within the claimed ranges. Patentee states that nothing in Cordick would motivate one to provide the bacteria in solution of binder within the claimed ranges, and to dilute the bacteria plus binder to an application solution of between 1.25 to 4%. This office respectfully disagrees with the above statement. Cordick teaches what the effective amount of spore blend applied to the carpet is. It would be within the skill of the artisan to formulate a solution so that on application, the amount of spore blend applied to the fibers would result in an amount effective for the inventive purpose. Cordick teaches all of the basic elements of applicant's process: an effective amount of spore blend to be applied to the carpet (see page 9 lines 9-17)); that the spore blend may be applied with fluorochemicals or other stain blockers (page 9 lines 19 et seq), and the treatment rate (page 10 lines 23 et seq) of the stain blocker or fluorochemical.

Applicant argues that the reference does not teach how to make and use the solution and that the examiner did not respond to this argument. Cordick teaches all of the elements needed to protect carpet from odor and while also providing stain resistant treatment via fluorochemical or other stain blocking chemical. It is the examiner's position that the solution which is applied must be effective to provide the necessary amount of odor control agent and other treatment chemicals. Cordick teaches the effective amount based on the weight of the fiber. It is within the ordinary skill of the artisan to calculate the dilution of the components knowing the effective add on amount of and odor control agent, both of which are taught by Cordick et al.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Margaret Einsmann whose telephone number is 571-272-1314. The examiner can normally be reached on 7:00 AM -4:30 PM M-Th and alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on 571-272-1316. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Margaret Einsmann
Primary Examiner
Art Unit 1751

September 15, 2004